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10/699,102	10/31/2003	Shuichi Takagi	50T5441.01	2678

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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/699,102	TAKAGI ET AL.
	Examiner	Art Unit	
	MIRANDA LE	2159	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 October 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14 and 24-27* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14, 24-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the
fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.
Since this application is eligible for continued examination under 37 CFR 1.114,
and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the
previous Office action has been withdrawn pursuant to 37 CFR 1.114.
Applicant's submission filed on 10/08/09 has been entered.

This communication is responsive to Amendment, filed 10/08/09.

Claims 1-14, 24-27 are pending in this application. This action is made
non-Final.

Claim Objections

Claims 2-4 are objected to under 37 CFR 1.75(c), as being of improper
dependent form for failing to further limit the subject matter of a previous claim. Claims 2-4
are computer-readable medium claims that refer to claim 1. Since claim 1 is a
method claim, claims 2-4 fail to further limit the parent claim. Applicant is
required to cancel the claim(s), or amend the claim(s) to place the claim(s) in
proper dependent form, or <u>rewrite the claim(s) in independent form</u>. (11563348)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to
> be patented and the prior art are such that the subject matter as a whole would have been
> obvious at the time the invention was made to a person having ordinary skill in the art to which
> said subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.

This application currently names joint inventors. In considering patentability

of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject

matter of the various claims was commonly owned at the time any inventions

covered therein were made absent any evidence to the contrary. Applicant is

advised of the obligation under 37 CFR 1.56 to point out the inventor and

invention dates of each claim that was not commonly owned at the time a

later invention was made in order for the examiner to consider the

applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior

art under 35 U.S.C. 103(a).

Claims 1-8, 10-14, 24, 25 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Carmel et al. (US Patent No. 6,389,473), in view of

Grambihler et al. (US Patent No. 6,560,655), and further in view of Miller et

al. (US Patent No. 5,920,701).

As to claims 1, 14, Carmel teaches a computer-implemented method for

synchronously transferring an amount of local data from a local data storage *(i.e.*

computer 34, Figs. 2, 4; the transmitting computer, col. 2, lines 51-59) medium to

a remote data storage *(i.e. Server 36, computers 30, Figs. 2, 4; clients, col. 2,*

lines 51-50) medium via a communications link having an available bandwidth

(i.e. Preferably, computer 34 monitors the rate of data being transmitted over

each of links 60, 62, 64, etc., and allocates files 42, 44, 46, 48, etc., according to

the data rates. The sizes of the files may be varied by adjusting slice durations

T.sub.1, T.sub.2, T.sub.3, etc., and a relatively greater volume of data may be

transmitted through links exhibiting relatively greater data rates. The bandwidth

open for transmission between computer 34 and server 36 is effectively roughly

equal to a sum of the bandwidths of the plurality of open links. The number of

links that are actually opened between computer 34 and server 36 may be less

than or greater than the five links shown in the example of FIG. 4, depending on

the available data rates of the open links, compared with the rate of data in

stream 40. Preferably at least two links are opened, so that preparation and

transmission of files 42, 44, 46, 48, etc., may be toggled back and forth between

the links. A similar technique is preferably employed by clients 30, col. 9, lines

31-48), the local data storage medium associated with a local computer system

having a local processor sequentially responsive to a plurality of local computer

programs, the remote data storage medium associated with a remote computer

system non-redundant of the local computer system and having a remote

processor, the method comprising:

evaluating local user *(i.e. transmitting computer, col. 2, lines 51-59)*

conditions *(i.e. the rate of data being transmitted over each of links 60, 62, 64,*

col. 9, lines 31-48; link 60 will have timed out, col. 12, lines 48-59) associated

with transfer of the local data *(i.e. the transmitting computer and the clients*

monitor the uploading and downloading of data to and from the server,

respectively, in order to determine the amount of time required to convey each

slice and to verify that the slices are conveyed at a sufficient rate. When the data

stream comprises multimedia data, the data rate should be generally equal to or

faster than the rate at which the data are generated at the transmitting computer,

col. 2, lines 51-59);

based on the currently available bandwidth *(i.e. data rate, col. 5, lines 3-*

14; the available data rates of the open links, col. 9, lines 31-48) and the amount

of local data *(i.e. The sizes of the files, col. 9, lines 31-49),* approximating a

transfer time *(i.e. On the other hand, if it is determined that the upload time for*

file 42 (or a subsequent file) is substantially shorter than duration T.sub.1, the

duration of subsequent files may be extended, and/or the compression ratio may

be decreased, so as to take better advantage of the available bandwidth, col. 12,

lines 14-17) for the local data *(i.e. the transmitting computer opens a plurality of*

links between the transmitting computer and the server, each link characterized

by a respective data rate, and transmits different ones of the sequence of files

over different ones of the plurality of links. Most preferably, the transmitting

computer opens the plurality of links such that the data rates of the links taken

together are sufficient to upload the sequence at the upload rate generally equal

to the data rate. Further preferably, the transmitting computer monitors the data

rates of the links and opens a new link in place of one of the links whose data

rate is lower than a predetermined level, col. 5, lines 3-14);

determining a status of the local processor *(i.e. Preferably, computer 34*

monitors the rate of data being transmitted over each of links 60, 62, 64, etc., and

allocates files 42, 44, 46, 48, etc., according to the data rates. The sizes of the

files may be varied by adjusting slice durations T1, T2, T3, etc., and a relatively

greater volume of data may be transmitted through links exhibiting relatively

greater data rates, col. 9, lines 31-49), wherein the determining step includes

determining if the local processor has reduced activity *(i.e. link 60 will have timed*

out, col. 12, lines 48-59) or is idle *(i.e. If link 60 has not completed transmission*

of file 42 by the time the sixth file is ready for transmission, link 60 will have timed

out, and a time-out indication will be received from step 88 (FIG. 5). In this case,

link 60 is terminated and is replaced by link 70. Preferably, a "socket" opened for

link 60 by a WINSOCK program running on computer 34 is simply reinitialized to

open link 70. Optionally, file 42 is retransmitted over link 70 or over one of the

other links, although in the case of a live broadcast transmission, it may be

preferable simply to drop the file rather than send it after such a long delay, col.

12, lines 48-58);

based on the approximated transfer time *(i.e. the time required to upload*

file 42 is measured and compared to T.sub.1, at the same time as file 44 (slice 2)

is being encoded and prepared, col. 11, lines 65 to col. 12, line 12), the local user

conditions, and the status of the local processor, selecting a time of day at which

(i.e. stream in real time, col. 2, line 60 to col. 3, line 5) to transmit the local data to

the remote data storage medium *(i.e. Computer 34 monitors the time codes as*

file 40 is transmitted, and clients 30 similarly monitor the time codes as the file is

received, in order to ensure that the transmission or reception is "keeping up"

with the input of the data to the computer. In the event that a lag is detected,

steps are taken to increase the data transmission or reception rate, as described

further hereinbelow. For example, as shown in FIG. 3A, time intervals T1, T2, T3,

etc., are not all equal, but rather are adjusted by computer 34 in response to the

transmission rate. Alternatively or additionally, the compression level of the data

is varied, as is likewise described below, so as to adjust the data streaming rate

to the available bandwidth over one or more channels between computer 34 and

server 36, and/or between server 36 and client 30, col. 7, lines 35-49); and

automatically arranging transfer of the local data to the remote data

storage medium via the communications link at the selected time *(i.e. Computer*

34 monitors the time codes as file 40 is transmitted, and clients 30 similarly

monitor the time codes as the file is received, in order to ensure that the

transmission or reception is "keeping up" with the input of the data to the

computer. In the event that a lag is detected, steps are taken to increase the data

transmission or reception rate, as described further hereinbelow. For example, as

shown in FIG. 3A, time intervals T.sub.1, T.sub.2, T.sub.3, etc., are not all equal,

but rather are adjusted by computer 34 in response to the transmission rate.

Alternatively or additionally, the compression level of the data is varied, as is

likewise described below, so as to adjust the data streaming rate to the available

bandwidth over one or more channels between computer 34 and server 36,

and/or between server 36 and client 30, col. 7, lines 35-49).

Carmel implicitly teaches evaluating local user conditions associated with

transfer of the local data as The client or the server monitors the data transfer

rate of a data link opened therebetween and selects the level that is appropriate

to the link bandwidth *(i.e. In other preferred embodiments, the slices are provided*

by the server at multiple resolution or quality levels. Each such level has a

different degree of data compression, and thus corresponds to a different data

bandwidth requirement. The client or the server monitors the data transfer rate of

a data link opened therebetween and selects the level that is appropriate to the

link bandwidth. If the monitored data transfer rate changes during transmission,

the quality level is preferably reselected accordingly, col. 3, lines 5-13).

Carmel does not specifically state the term "evaluating local user

conditions associated with transfer of the local data".

Grambihler teaches this limitation *(i.e. The synchronization manager 60*

may support user-scheduled automatic synchronizations, by providing a

schedule dialog and wizard 64 (FIG. 2) that include user dialogs for showing and

configuring logon synchronization preferences, logoff synchronization

preferences, idle synchronization preferences and scheduled synchronizations.

By way of example, a particular user may schedule an automatic synchronization

of local and remote electronic mail messages on each logon, schedule an

automatic synchronization of local files with network database files every

Thursday at 11:00 PM, and schedule a synchronization of subscriptions during

idle times. A set of interfaces may also be provided whereby handlers can set up

schedules outside of the user interface of the synchronization manager 60, col. 9,

lines 34-38).

It would have been obvious to one of ordinary skill of the art having the

teaching of Carmel and Grambihler at the time the invention was made to modify

the system of Carmel to include the limitations as taught by Grambihler. One of

ordinary skill in the art would be motivated to make this combination in order to

provide a schedule dialog and wizard that include user dialogs for showing and

configuring logon synchronization preferences, logoff synchronization

preferences, idle synchronization preferences and scheduled synchronizations in

view of Grambihler, as doing so would give the added benefit of providing an

improved method and system for managing the synchronization of local and

remote data by multiple applications and system components as taught by

Grambihler (See TECHNICAL FIELD).

Carmel implicitly teaches a time of day at which as in real time *(i.e. stream*

in real time, col. 2, line 60 to col. 3, line 5).

Carmel, Grambihler do not explicitly teach "selecting a time based on

bandwidth".

Miller teaches this limitation in Fig. 7 and Table in column 7.

It would have been obvious to one of ordinary skill of the art having the

teaching of Carmel, Grambihler and Miller at the time the invention was made to

modify the system of Carmel, Grambihler to include the limitations as taught by

Miller. One of ordinary skill in the art would be motivated to make this

combination in order to schedule for data transmission from the content sources

to the replicated servers in view of Miller (col. 6, lines 8-34), as doing so would

give the added benefit of managing how the content can be distributed by many

content providers so that the distributions do not overwhelm network bandwidth,

and how can multicast addresses be allocated without conflict among the various

content sources as taught by Miller (col. 1, lines 20-49).

      As per claim 2, Carmel teaches a computer-readable medium encoded

with a program which, when loaded into a processor, implements the method of

claim 1 *(See Figs. 2, 4)*.

      As per claim 3, Carmel teaches the computer-readable storage medium

according to claim 2, wherein the computer program comprises one of the

plurality of local computer-program, and the processor comprise the local

processor *(See Figs. 2, 4)*.

      As per claim 4, Carmel teaches the computer-readable storage medium

according to claim 2, wherein the processor comprises the remote processor

(See Figs. 2, 4).

      As per claim 5, Carmel teaches the computer-implemeted method

according to claim 1, further comprising: automatically transmitting the local data

to the remote data storage medium at the selected time *(i.e. Computer 34*

monitors the time codes as file 40 is transmitted, and clients 30 similarly monitor

the time codes as the file is received, in order to ensure that the transmission or

reception is "keeping up" with the input of the data to the computer. In the event

that a lag is detected, steps are taken to increase the data transmission or

reception rate, as described further hereinbelow. For example, as shown in FIG.

3A, time intervals T.sub.1, T.sub.2, T.sub.3, etc., are not all equal, but rather are

adjusted by computer 34 in response to the transmission rate. Alternatively or

additionally, the compression level of the data is varied, as is likewise described

below, so as to adjust the data streaming rate to the available bandwidth over

one or more channels between computer 34 and server 36, and/or between

server 36 and client 30, col. 7, lines 35-49).

As per claim 6, Carmel teaches the computer-implemented method
according to claim 1, further comprising: automatically arranging for interruption
of transfer of the local data bases on the status of the local processor *(i.e.*

Computer 34 monitors the time codes as file 40 is transmitted, and clients 30

similarly monitor the time codes as the file is received, in order to ensure that the

transmission or reception is "keeping up" with the input of the data to the

computer. In the event that a lag is detected, steps are taken to increase the data

transmission or reception rate, as described further hereinbelow. For example, as

shown in FIG. 3A, time intervals T.sub.1, T.sub.2, T.sub.3, etc., are not all equal,

but rather are adjusted by computer 34 in response to the transmission rate.

Alternatively or additionally, the compression level of the data is varied, as is

likewise described below, so as to adjust the data streaming rate to the available

bandwidth over one or more channels between computer 34 and server 36,

and/or between server 36 and client 30, col. 7, lines 35-49).

As per claim 7, Carmel teaches the computer-implemented method

according to claim 6, further comprising: automatically interrupting transfer of the

local data based on the status of the local processor *(i.e. If link 60 has not*

completed transmission of file 42 by the time the sixth file is ready for

transmission, link 60 will have timed out, and a time-out indication will be

received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced

by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program

running on computer 34 is simply reinitialized to open link 70. Optionally, file 42 is

retransmitted over link 70 or over one of the other links, although in the case of a

live broadcast transmission, it may be preferable simply to drop the file rather

than send it after such a long delay, col. 12, lines 48-58).

As per claim 8, Carmel teaches the computer-implemented method

according to claim 6, wherein the status of the local processor is inferred from

one of: status of a display device, a status of a memory; a configured processor

utilization; and a time since a last interactive use of the local computer system

(i.e. If link 60 has not completed transmission of file 42 by the time the sixth file is

ready for transmission, link 60 will have timed out, and a time-out indication will

be received from step 88 (FIG. 5). In this case, link 60 is terminated and is

replaced by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK

program running on computer 34 is simply reinitialized to open link 70.

Optionally, file 42 is retransmitted over link 70 or over one of the other links,

although in the case of a live broadcast transmission, it may be preferable simply

to drop the file rather than send it after such a long delay, col. 12, lines 48-58).

As per claim 10, Carmel teaches the computer-implemented method

according to claim 6, further comprising: after automatically arranging for

interruption of transfer of the local data, automatically arranging for resumption of

transfer of the local data based on the status of the local processor *(i.e. If link 60*

has not completed transmission of file 42 by the time the sixth file is ready for

transmission, link 60 will have timed out, and a time-out indication will be

received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced

by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program

running on computer 34 is simply reinitialized to open link 70. Optionally, file 42 is

retransmitted over link 70 or over one of the other links, although in the case of a

live broadcast transmission, it may be preferable simply to drop the file rather

than send it after such a long delay, col. 12, lines 48-58).

As per claim 11, Carmel teaches the computer-implemented method

according to claim 10, further comprising: automatically resuming transfer of the

local data based on the status of the local processor *(i.e. If link 60 has not*

completed transmission of file 42 by the time the sixth file is ready for

transmission, link 60 will have timed out, and a time-out indication will be

received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced

by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program

running on computer 34 is simply reinitialized to open link 70. Optionally, file 42 is

retransmitted over link 70 or over one of the other links, although in the case of a

live broadcast transmission, it may be preferable simply to drop the file rather

than send it after such a long delay, col. 12, lines 48-58).

As per claim 12, Carmel teaches the computer-implemented method

according to claim 1, wherein the local user conditions comprise one of: a

location of the local data; a preferred transfer time; a file extension associated

with the local data; and a status of the communication link *(i.e. the rate of data*

being transmitted over each of links 60, 62, 64, col. 9, lines 31-48; link 60 will

have timed out, col. 12, lines 48-59).

As per claim 13, Carmel teaches the computer-implemented method

according to claim 1, wherein the remote processor and the local processor are

under independent control *(See Figs. 2, 4).*

As per claim 24, Carmel teaches the computer-implemented method

according to claim 1, wherein the status is determined by direct monitoring of the

local processor *(i.e. Preferably, computer 34 monitors the rate of data being*

transmitted over each of links 60, 62, 64, etc., and allocates files 42, 44, 46, 48,

etc., according to the data rates. The sizes of the files may be varied by adjusting

slice durations T1, T2, T3, etc., and a relatively greater volume of data may be transmitted through links exhibiting relatively greater data rates, col. 9, lines 31-49).

As per claim 25, Carmel teaches the computer-implemented method according to claim 1, wherein the status is inferred by monitoring a status of other programs associated with the local computer-system *(i.e. If link 60 has not completed transmission of file 42 by the time the sixth file is ready for transmission, link 60 will have timed out, and a time-out indication will be received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program running on computer 34 is simply reinitialized to open link 70. Optionally, file 42 is retransmitted over link 70 or over one of the other links, although in the case of a live broadcast transmission, it may be preferable simply to drop the file rather than send it after such a long delay, col. 12, lines 48-58).*

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carmel et al. (US Patent No. 6,389,473), in view of Grambihler et al. (US Patent No. 6,560,655), and Miller et al. (US Patent No. 5,920,701), as applied to claims above, and further in view of Roberts et al. (US Patent No. 6,920,110).

      As per claim 9, Carmel implicitly teaches the status of the display device

comprises activation of a screen-saver as link 60 will have timed out, col. 12,

lines 48-59.

      Miller implicitly teaches the status of the display device comprises

activation of a screen-saver as if the transmission was unsuccessful, col. 3, lines

1-23.

      Grambihler implicitly teaches the status of the display device comprises

activation of a screen-saver as idle in col. 9, lines 34-38.

      Carmel, Grambihler, Miller do not clearly state the term "screen saver".

      Roberts teaches this limitation *(i.e. The relatively low level of actual*

network bandwidth utilization shown from T.sub.5 through T.sub.8 (FIG. 4) is

sometimes referred to as "network idle." This concept differs from "machine idle,"

which occurs when a PC user is not currently using the keyboard or mouse. If the

machine remains idle for a period of time, a screen saver may be invoked, col. 7,

line 59 to col. 8, line 12).

      It would have been obvious to one of ordinary skill of the art having the

teaching of Carmel, Grambihler, Miller, Roberts at the time the invention was

made to modify the system of Carmel, Grambihler, Miller to include the limitations

as taught by Roberts. One of ordinary skill in the art would be motivated to make

this combination in order to the transfer of a set of data over a network at a time

when the network utilization is relatively low in view of Roberts (col. 7, line 59 to

col. 8, line 12), as doing so would give the added benefit of maintaining equally

applicable to uploads from the client to the server or other communication of data

between computers as taught by Roberts (col. 7, line 59 to col. 8, line 12).

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Carmel et al. (US Patent No. 6,389,473), in view of Grambihler et al. (US

Patent No. 6,560,655), and Miller et al. (US Patent No. 5,920,701), as applied

to claims above, and further in view of Knox et al. (US Pub No.

20020083124).

As per claim 26, Miller implicitly teaches the file extension as criterion,

col. 6, lines 52-59 *(i.e. The priority level for each content source 12, 14 is*

assigned based on some criterion. For example, certain content sources 12, 14

may be charged a greater fee by the scheduler 10, in return for being accorded a

higher priority in the distribution of content data over the network. These priorities

can be stored in memory 32 in the scheduler 10 to be factored into the

calculation of transmission parameters for each content source 12, 14

transmission, col. 6, lines 52-59).

Carmel, Grambihler, Miller do not specifically state the term "file

extension".

Knox teaches the computer-implemented method according to claim 1,

wherein the local user conditions comprise file extensions of the local data *(i.e. In*

this step, the process 40 can execute a computer process that is capable of

analyzing the contents of the uploaded data file. For example, the file structure of

the uploaded data file may be known to the process and may be identified to that

process by the file extension associate with the uploaded file. For example, a

**.rm file indicates a file format compatible with the Real Media file structure. The*

*process 40 can include logic that understands the file structure of the *.rm format.*

The file structure typically includes information regarding the title of the file, the

size of the file, an associated codec, bit rate and other characteristics of that file,

[0043]).

It would have been obvious to one of ordinary skill of the art having the

teaching of Carmel, Grambihler, Miller, Knox at the time the invention was made

to modify the system of Carmel, Grambihler, Miller to include the limitations as

taught by Knox. One of ordinary skill in the art would be motivated to make this

combination in order to analyze the contents of the uploaded data file in view of

Knox ([0043]), as doing so would give the added benefit of allowing the user to

set or adjust meta-data characteristics of the uploaded media asset, and a

distribution process is capable of replicating the media asset and distributing the

replicated versions of that asset across the data network as taught by Knox

(Abstract).

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable

over Carmel et al. (US Patent No. 6,389,473), in view of Grambihler et al. (US

Patent No. 6,560,655), and Miller et al. (US Patent No. 5,920,701), as applied

to claims above, and further in view of of Quinet et al. (US Pub No.

20050240940).

As per claim 27, Miller implicitly teaches local data having a first file extension is transferred immediately and wherein local data having a second file extension is transferred at a later time of day as The priority level for each content source 12, 14 is assigned based on some criterion, col. 6, lines 52-59 *(i.e. The priority level for each content source 12, 14 is assigned based on some criterion. For example, certain content sources 12, 14 may be charged a greater fee by the scheduler 10, in return for being accorded a higher priority in the distribution of content data over the network. These priorities can be stored in memory 32 in the scheduler 10 to be factored into the calculation of transmission parameters for each content source 12, 14 transmission, col. 6, lines 52-59).*

Carmel, Grambihler, Miller, Knox do not clearly state this limitation.

Quinet teaches the computer-implemented method according to claim 26, wherein local data having a first file extension is transferred immediately and wherein local data having a second file extension is transferred at a later time of day *(i.e. [0065] The object does not have a priority yet, but the file extension looks like HTML (".HTML",".HTM") or XML (".XML") or looks like a directory index (ends"/"). Such a priority assignment ensures that a HTML page requested from the bookmarks or typed in directly will be requested with a high priority).*

It would have been obvious to one of ordinary skill of the art having the teaching of Carmel, Grambihler, Miller, Knox, Quinet at the time the invention was made to modify the system of Carmel, Grambihler, Miller, Knox to include the limitations as taught by Quinet. One of ordinary skill in the art would be motivated to make this combination in order to assign an initial priority to an

requested object in view of Quinet (Abstract), as doing so would give the added

benefit of controlling in a communications network an object transfer from a first

network component via the intermediate component to a second network

component as taught by Quinet (Abstract).

Response to Arguments

Applicant's arguments filed 10/08/09 have been fully considered but they

are not persuasive as for the following reasons:

1. Evaluating user condition

The step of **evaluation user condition** is taught by Carmel as *The client*

or the server monitors the data transfer rate of a data link opened therebetween

and selects the level that is appropriate to the link bandwidth, col. 3, lines 5-13.

The step of **evaluation user condition** is taught by Grambihler (i.e. The

synchronization manager 60 may support user-scheduled automatic

synchronizations, by providing a schedule dialog and wizard 64 (FIG. 2) that

include user dialogs for showing and configuring logon synchronization

preferences, logoff synchronization preferences, idle synchronization preferences

and scheduled synchronizations. By way of example, a particular user may

schedule an automatic synchronization of local and remote electronic mail

messages on each logon, schedule an automatic synchronization of local files

with network database files every Thursday at 11:00 PM, and schedule a

synchronization of subscriptions during idle times. A set of interfaces may also be

provided whereby handlers can set up schedules outside of the user interface of

the synchronization manager 60, col. 9, lines 34-38) (NEW GROUND

REJECTION).

The step of **evaluation user condition** is taught by Miller as *if the*

pathway bandwidth is 1.544 Mbps, and 60% of the pathway bandwidth is

available for data transfer between 10:00 PM and 6:00 AM, the scheduler 10

determines that the actual bandwidth for data content transfers from the content

sources 12, 14 during this interval is 926.4 Kbps. The actual bandwidth can be

stored in memory 32 for later retrieval, col. 8, lines 50-63.

2. Selecting a time of day

The teaching of Carmel is implied **a time of day** as in real time *(i.e.*

stream in real time, col. 2, line 60 to col. 3, line 5).

Grambihler teaches **a time of day** as Thursday at 11:00 PM (i.e. The

synchronization manager 60 may support user-scheduled automatic

synchronizations, by providing a schedule dialog and wizard 64 (FIG. 2) that

include user dialogs for showing and configuring logon synchronization

preferences, logoff synchronization preferences, idle synchronization preferences

and scheduled synchronizations. By way of example, a particular user may

schedule an automatic synchronization of local and remote electronic mail

messages on each logon, schedule an automatic synchronization of local files

with network database files every **Thursday at 11:00 PM**, and schedule a

synchronization of subscriptions during idle times. A set of interfaces may also be

provided whereby handlers can set up schedules outside of the user interface of

the synchronization manager 60, col. 9, lines 34-38) (NEW GROUND

REJECTION).

Miller teaches **a time of day** in Fig. 7 and Table in column 7.

3. Selecting a time of day based on Evaluation.

Grambihler teaches selecting a time of day **based on user condition** as

in col. 9, lines 24-38 (i.e. The synchronization manager 60 may support user-

scheduled automatic synchronizations, by providing a schedule dialog and

wizard 64 (FIG. 2) that include user dialogs for showing and configuring logon

synchronization preferences, logoff synchronization preferences, idle

synchronization preferences and scheduled synchronizations. By way of

example, a particular user may schedule an automatic synchronization of local

and remote electronic mail messages on each logon, schedule an automatic

synchronization of local files with network database files every **Thursday at**

11:00 PM, and schedule a synchronization of subscriptions during idle times. A

set of interfaces may also be provided whereby handlers can set up schedules

outside of the user interface of the synchronization manager 60, col. 9, lines 34-

38) (NEW GROUND REJECTION).

Miller teaches selecting a time of day **based on bandwidth**, See Fig. 6

and Table in column 7.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Miranda Le whose telephone number is (571) 272-4112. The examiner can normally be reached on Monday through Friday from 10:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James K. Trujillo, can be reached at (571) 272-3677. The fax number to this Art Unit is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Miranda Le/

Primary Examiner, Art Unit 2159